



Emergency Rulemaking Process

Introduction

The standard rulemaking process takes a minimum of 108 days and can last six months or longer. Such delays can limit an agency's ability to swiftly react to emergency situations. Chapter 17A, the Iowa Administrative Procedure Act, has two procedures that can be used individually or jointly to either shorten or even eliminate delays caused by the rulemaking process. These two procedures have been informally referred to as the "emergency" rulemaking process, but that name is not entirely accurate. The process is not limited solely to emergency situations and that phrase does not appear in chapter 17A.

The emergency rulemaking process is a combination of Iowa Code §17A.4(3)(a), which relates to the publication of a notice of intended action, and Iowa Code §17A.5(2)(b), which relates to effective dates. Since there are two parts to the rulemaking process, there are two procedures an agency must follow in order to fully shorten the rulemaking process.

Eliminating notice, Iowa Code §17A.4(3)(a)

To eliminate the notice requirements of the rulemaking process, one of two conditions must be met. First, an agency may have statutory authority specifically authorizing emergency rulemaking regarding a particular subject. Second, an agency may receive approval from the Administrative Rules Review Committee (ARRC). Committee approval to file an emergency rule requires a simple majority (6-member) vote of the 10-member committee. The standard for approval is a finding that notice and public participation would be unnecessary, impracticable, or contrary to the public interest. The ARRC generally requires an opportunity to review a draft of the language of an emergency rule prior to approval.

Making Rules Effective Prior to Publication, Iowa Code §17A.5(2)(b)

An adopted rule cannot be effective prior to its filing with and acceptance by the Administrative Rules Coordinator, but it can be made effective on the date of filing and acceptance, or any subsequent date prior to publication in the Iowa Administrative Bulletin, if any of the criteria under §17A.5(2)(b)(1) are met. Approval by the ARRC is not required to make a rule effective prior to publication. Rules may become effective prior to publication if any of the following apply:

1. The agency has statutory authority specifically authorizing emergency rulemaking regarding a particular subject.
2. The rule confers a benefit or removes a restriction on the public or some segment thereof.
3. The early effective date is necessary because of an imminent peril to the public health, safety, or welfare.

Using the procedure provided under §17A.5(2)(b) without using the procedure provided under §17A.4(3)(a) allows for partial emergency rulemaking without ARRC approval and potentially without statutory authorization. Such a process is known as filing emergency after notice.



Objection, Sunset, and Suspension

Emergency rules can be sunsetted, which means the rules are no longer effective on a specified date. Although emergency rules are permanent like non-emergency rules, the ARRC, by a two-thirds (7-member) vote of the committee; the Governor; or the Attorney General may file an objection to an emergency rule pursuant to Iowa Code §17A.4(3)(b). An emergency objection causes the rule to cease to be effective 180 days after the objection is filed. An emergency objection is an objection to the use of emergency rulemaking procedures; it is not necessarily an objection to the underlying substance of an emergency rule.

If the ARRC files such an objection, the ARRC may then also suspend the applicability of an emergency rule, by a two-thirds vote, until the sunset takes place and the suspended rule ceases to be effective.

Within 35 days of publication of an emergency rule, the ARRC may also, by a two-thirds vote, suspend the applicability of the rule for 70 days or until the adjournment of the next regular session of the General Assembly.

“Double-Barreled” Filing

The procedure informally known as a “double-barreled” filing is a process for using emergency rulemaking while still allowing for notice and public comment. Under this procedure, when an agency submits an emergency rule for publication in the Iowa Administrative Bulletin, the agency also submits a notice of intended action containing the same rule language, thus providing for public participation and possible amendment on adoption. Each filing is assigned a separate ARC number. The notice can ultimately be adopted and replace the earlier emergency filing. Double-barreled filing is strongly preferred, and generally required by statute or the ARRC, when emergency rulemaking is used.

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